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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,886	12/28/2001	Jay D. Hodson	24180-907000	1633
7590	08/25/2005		EXAMINER	
Stephen T. Scherrer McDermott, Will & Emery 227 West Monroe Street Chicago, IL 60606-5096			RHEE, JANE J	
			ART UNIT	PAPER NUMBER
			1745	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/034,886	HODSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jane Rhee	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 31-50 and 70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 31-50,70 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/8/2005 has been entered.

#### ***Rejections Withdrawn***

1. The 35 U.S.C. 112 2<sup>nd</sup> paragraph rejection of claim 38 has been withdrawn due to applicant's amendment filed on 6/8/2005.
2. The 35 U.S.C. 102(e) rejection of claims 31,33-35,38-46,70 has been withdrawn due to applicant's amendment filed on 6/8/2005.
3. The 35 U.S.C. 103(a) rejection of claims 32,36,49-50 has been withdrawn due to applicant's amendment filed on 6/8/2005.
4. The 35 U.S.C. 103(a) rejection of claims 47-48 has been withdrawn due to applicant's amendment filed on 6/8/2005.

#### ***New Rejections***

##### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 31-50,70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new matter issue is "a first laser-scored pattern in the first surface of the flexible film but not in the second surface of the flexible film."

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 31,38-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Huizinga (5001325).

As to claim 31, Huizinga discloses a flexible thermoplastic polymeric film comprising a plurality of layers (col. 3 lines 66-67, col. 4 lines 1-8), a first surface and a second surface of the flexible film comprising a coordinate system having a machine direction and a transverse direction perpendicular to the machine direction (col. 3 lines 16-21) and a first laser scored pattern in at least one layer of the plurality of layers of the flexible film (figure 3a number 21) in the first surface of the flexible film but not in the second surface of the flexible film (col. 1 line 58) wherein the first laser scored pattern is

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disposed in both the machine direction and the transverse direction of the surface of the flexible film wherein the first laser scored pattern forms a first line of weakness in the flexible film (col. 3 lines 16-21) running continuously in the machine direction of the flexible film (col. 3 line 63). As to claims 38 and 39, Huizinga discloses that the first laser scored pattern comprises a first portion that is straight and parallel to the edge of the flexible film wherein the edge runs in the machine direction (figure 4b number 21). As to claim 40, Huizinga discloses the first laser scored pattern comprises a recurring pattern in the machine direction of the surface of the flexible film (col. 1 lines 55-62). As to claim 41, Huizinga discloses that the first portion is a straight line disposed in the machine direction of the surface of the flexible film (figure 5 number 21). As to claim 42, Huizinga discloses that the first portion and the second portion form a continuous score line (figure 5 number 21). As to claim 43, Huizinga discloses that the second portion is displaced toward the first edge of the flexible film relative the first portion (figure 5 number 21). As to claim 44, Huizinga discloses a recurring symbol on the surface of the flexible film for indicating where to apply the first laser scored pattern on the face of the flexible film (figure 5 letter z). As to claim 45, Huizigna discloses a second laser scored pattern on the surface of the flexible film wherein the second laser scored pattern is disposed in the machine direction and the transverse direction of the surface of the flexible film and further wherein the second laser scored pattern forms a second line of weakness in the flexible film (figure 5 number 21). As to claim 46, Huizigna discloses that the first laser scored pattern is disposed proximate a first edge of the flexible film and further wherein the second laser scored pattern is mirror image of the first laser

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scored pattern and further wherein the second laser scored pattern is disposed proximate a second edge of the flexible film (figure 5 number 21).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 32-37,49-50,70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huizinga in view of Schlaepi (0596747).

Huizinga discloses the flexible thermoplastic polymeric film described above. As to claim 32, Huizinga discloses a first layer comprising a material of polypropylene (col. 4 line 1) and a barrier layer (col. 4 line 5) within the flexible film comprising a material of metal foil wherein the outer layer and barrier material is laminated to the second film structure with a material of adhesive (col. 4 line 4). As to claim 33, Huizinga discloses that the first layer forms an outer layer of the flexible film (col. 4 line 9). As to claim 34, Huizinga discloses a second layer comprising a material selected from group consisting of adhesive (col. 4 line 4). As to claim 35, Huizinga fail to disclose that the second layer does not have the first laser scored pattern etched therein. As to claims 32 and 49,Huizinga fail to disclose an outer first layer of oriented polypropylene or as to claims 36,37 and 50, a first layer of barrier layer such as a metal foil.

Schlaepi teaches an outer first layer of oriented polypropylene or a first layer of a barrier layer such as a metal foil (col. 4 lines 29-37) for the purpose of providing a

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multilayer flexible packaging film (col. 4 lines 39-40). Schlaeppi teaches that the second layer does not have the first scored pattern etched therein for the purpose to effect easy opening of the package along the rows of slits of the first layer which would facilitate the rupture of the other layer and to provide ready access to the product in the product receiving chamber (col. 2 lines 40-49).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Huizinga with an outer first layer of oriented polypropylene or a first layer of a barrier layer such as a metal foil in order to provide a multilayer flexible packaging film (col. 4 lines 39-40) as taught by Schlaeppi.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Huizinga with the second layer that does not have the first scored pattern etched therein in order to effect easy opening of the package along the rows of slits of the first layer which would facilitate the rupture of the other layer and to provide ready access to the product in the product receiving chamber (col. 2 lines 40-49) as taught by Schlaeppi.

As to the continuous line of weakness that is disposed in the flexible film in both the machine and transverse directions of the flexible film by a laser beam without refocusing the laser beam in claim 70, is a process limitation wherein determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as from a product of the prior art, the claim is unpatentable even though the

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prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

8. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huizinga in view of Bailey (6544629).

Huizinga discloses the flexible thermoplastic polymeric film described above. Huizinga fail to disclose that the first line of weakness in the flexible film has a tensile strength measured across the line of weakness of between about 3 lb/in. and about 10lb/in, preferably 6.5lb/in. Bailey discloses that the first line of weakness in the flexible film has a tensile strength measured across the line of weakness of between 6 to 16 lbs/inch for the purpose of enabling separation between adjacent laminate structures (col. 1 lines 60-64).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Huizinga with the first line of weakness in the flexible film that has a tensile strength measured across the line of weakness of between 6 to 16 lbs/inch in order to enable separation between adjacent laminate structures (col. 1 lines 60-64) as taught by Bailey.

#### ***Response to Arguments***

9. Applicant's arguments with respect to claims 31-50,70 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee  
August 19,2005



PATRICK JOSEPH RYAN  
SUPERVISORY PATENT EXAMINER